

CITY OF LAS ANIMAS, COLORADO

ORDINANCE NO. 645

AN ORDINANCE GRANTING TO KINDER MORGAN, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, CERTAIN FRANCHISES AND RIGHTS IN THE CITY OF LAS ANIMAS, COUNTY OF BENT, AND STATE OF COLORADO AND REPEALING ORDINANCE NO. 444.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS ANIMAS, COUNTY OF BENT, AND STATE OF COLORADO

SECTION 1. That there be and hereby is granted to Kinder Morgan, Inc, a corporation, its successors and assigns, hereinafter collectively referred to as "Grantee" the sole and exclusive right, privilege, and franchise to construct, erect, build, operate and maintain, within the City of Las Animas I Colorado, hereinafter referred to as "Municipality," such mechanical or other appliances and equipment as may be necessary for the manufacture and distribution of manufactured, or mixed manufactured and natural gas, or for the distribution of natural gas, for lighting, power, heating, industrial, or other purposes to which gas may be applied whether manufactured, mixed, or natural, with the sole and exclusive right and privilege for the period and upon the terms and conditions hereinafter specified, to construct, maintain and operate a transmission line or lines for the purpose of conducting into or from or to said Municipality, gas generated there or elsewhere, and to sell or furnish natural or manufactured or mixed gas to the said Municipality and the inhabitants thereof, and to distribute the same by means of mains, conduits, or pipes laid over, upon, along, under, and/or across the streets, alleys, bridges, public ways, and the public places in the said Municipality and upon the extension or continuation of any such streets, alleys, bridges, and public ways and places or upon any new streets, alleys, bridges, and public ways and places that may hereafter be laid out, opened, or constructed, and consent is hereby given to construct, operate, and maintain through said Municipality a main transmission line or lines for the service of other cities and communities outside of the Municipality.

And for the purposes aforesaid the Grantee may enter upon, through, or under any street, avenue, alley, viaduct, subway, or public place or grounds and take up any pavement or sidewalk then existing therein or thereon and make excavations necessary for the laying of such conduits, mains, pipes and appurtenances, provided that any such use of said streets, avenues, alleys, viaducts, subways and public grounds be made with the least possible inconvenience to the inhabitants of said Municipality; that such

excavations be barricaded when necessary and lighted at night and that such sidewalks, pavements, or excavations be refilled and replaced without unnecessary delay, by and at the expense of the Grantee, in as good condition as they were before said work was commenced.

**PROVIDED, HOWEVER,** that the Grantee shall not have the absolute right to cut into or remove any permanent sidewalks, but shall be required wherever practicable in laying mains, conduits or pipes to tunnel under said sidewalks;

**PROVIDED, FURTHER,** that said Grantee shall not have the right to enter into any public park or public grounds in said Municipality for the purpose of laying conduits, pipes, or mains until it has first obtained the consent of the City Council so to do.

**SECTION 2.** All conduits, pipes and mains shall be placed in alleys wherever practicable and in any event in such manner as will not unnecessarily interfere with the use of said streets and alleys, and public highways, places, and grounds nor with the established grade of streets or gutters, nor with water pipes or sewers or any character of drain pipes which are now installed in the said streets or alleys by the said Municipality.

If at any time it shall be necessary to change the position of any gas main or service connection of the Grantee to permit the Municipality to lay, make, replace or change street or other grades, sanitary or storm sewers, water mains or other Municipal works, such changes shall be made by the Grantee at its own expense; provided, however, the Municipality shall confer with the Grantee and seek the Grantee's input during the initial phase of planning and engineering of any Municipal project which may require the Grantee to relocate its facilities in order to explore means of reducing the costs to the Grantee, and the Municipality shall make reasonable efforts to mitigate the financial impact of any such project on the Grantee. If the Municipality does not confer with the Grantee during the initial phase of planning and engineering of any Municipal project which may require the Grantee to relocate its facilities, such Grantee relocation expenses shall be paid by the Municipality.

If the Municipality and Grantee confer and do not agree on a facilities relocation plan, the Grantee may request and Municipal representatives shall participate in good faith mediation before a mutually agreeable third party in an effort to resolve their differences.

The Municipality will not oppose in proceedings before the Colorado Public Utilities Commission just and reasonable recovery of costs which the Grantee incurs in complying herewith.

**SECTION 3.** The Grantee shall be and remain solely and exclusively responsible for all damage to persons or property that may arise by reason of any negligence of the Grantee or any of its agents, servants, or employees, in exercising any of the privileges, rights, or franchises herein granted. The said Grantee shall hold and save harmless the Municipality from and against any and all loss and damage of any kind or description whatever by reason of Grantee's negligent exercise of any right, privilege, or franchise hereby granted.

**SECTION 4.** This Ordinance and the rights, privileges, and franchises hereby granted shall be and remain in full force and effect for the period of twenty-five (25) years from and after its effective date, provided the Grantee shall, before such effective date, have filed with the City Clerk of said municipality its written acceptance of this Ordinance and in case of failure of said Grantee to file such acceptance within the time so limited, this Ordinance, and the rights, privileges, and franchises hereby granted shall be and become null and void, but the rights and franchises granted by this Ordinance are granted upon the express condition that said Municipality shall have the right and power to purchase or to condemn at the time or times and under the conditions and in the manner provided by the laws of the State of Colorado at such time in full force and effect, all works plants erected hereunder and all property of said Grantee actually used or useful for the convenience of said Municipality.

**SECTION 5.** In consideration of the rights and privileges herein granted, the Grantee shall assess, effective the first billing cycle after this franchise becomes effective, to all customers of Grantee within the City of Las Animas, Colorado, a franchise tax or fee equivalent to \$0.017 per ccf (100 cubic feet) for gas delivered to all customers within said Municipality on Grantee's distribution system. Grantee shall pay to the City Treasurer a quarterly payment for the period ending March 31, June 30, September 30 and December 31 within 30 days after the end of each period for the duration of this franchise, in an amount equal to the franchise fee or tax funds collected by Grantee hereunder. Payment shall be made on or before March 1 of each year for the preceding year and each such payment shall be accompanied by a statement supporting the payment.

Such payment shall be in lieu of any and all other fees, charges, licenses, taxes or assessments which said Municipality may impose for the rights and privileges herein granted or for the

privilege of doing business within said Municipality and, in the event any such fee, charge, license, tax or assessment shall be imposed by said Municipality, the payment to be made in accordance with the provisions of this section shall be refunded in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad Valorem property taxes imposed generally upon all real and personal property within said Municipality shall not be deemed to affect the obligation of the Grantee under this section.

**SECTION 6.** Ordinance No. 444, passed under date of September 19, 1978, is hereby repealed and of no further force or effect.

**SECTION 7.** The rights, privileges, franchises and easements hereby granted shall inure to the benefit of said Grantee, its successors and assigns, and wherever the term "Grantee" is used herein it shall be held to mean and include Kinder Morgan, Inc., its successors and assigns, and wherever the word "Municipality" is used herein it shall be held to mean the City of Las Animas, County of Bent, and State of Colorado.

**SECTION 8.** If any clause, sentence or section of this Ordinance shall be held void by any court, the same shall not affect the remainder of this Ordinance.

**SECTION 9.** This Ordinance shall take effect thirty (30) days after it has been published as provided by law following its final passage and approval and upon acceptance by Grantee shall be held to constitute a binding contract between said Municipality and Grantee, subject to its terms and conditions.


PASSED on First Reading this 9th day of September, 2003.

ADOPTED AND APPROVED this 14th day of October, 2003.

CITY OF LAS ANIMAS

  
William Howland, Mayor

ATTEST:

  
Charmaine Tripp, City Clerk